

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KEVIN L. DICKENS,	:
	:
Plaintiff,	:
	:
v.	: Civil Action No. 04-201-JJF
	:
	:
COMMISSIONER STAN TAYLOR,	:
et al.,	:
	:
Defendants.	:

ORDER

WHEREAS, Plaintiff, Kevin L. Dickens, filed a civil rights action pursuant to 42 U.S.C. § 1983 without prepayment of the filing fee;

WHEREAS, on October 21, 2004, the Court dismissed the case, for Plaintiff's failure to provide the required USM-285 forms (D.I. 10);

WHEREAS, on August 22, 2005, the Court entered an order finding the complaint had been inadvertently dismissed, and ordered Plaintiff to complete and return to the Clerk of the Court for service upon the defendants, a copy of the complaint and an original "U.S. Marshal-285" form for the each defendant, as well as for the Attorney General of the State of Delaware, within 120 days from the date of the order or face the possibility of dismissal of the case pursuant to Fed. R. Civ. P. 4(m) (D.I. 16);

WHEREAS, on December 21, 2005, Plaintiff filed a motion to

amend the complaint on the basis that his file copy was destroyed, and Plaintiff further requested the Court advise him which Defendants required USM-285 forms (D.I. 20);

WHEREAS, the proposed amended complaint is virtually identically to the original complaint;

THEREFORE, at Wilmington this 7 day of ~~February~~ ^{March}, 2006, IT IS HEREBY ORDERED that:

1. The Clerk of the Court shall cause a copy of this order to be mailed to Plaintiff.

2. The motion to amend complaint (D.I. 20) is GRANTED.

3. The Clerk's Office is directed to file the amended complaint instantner.

4. Plaintiff is advised that the Court docket indicates USM-285 forms were on December 23, 2005, for Defendants Nurse Courtney Doe, Dr. Arron Burl, Nurse Cindy Doe, Brenda Holwerda, and Jayme Jackson; and on January 30, 2006, for Defendants Ms. Jill Havel, Carl Danberg, Stanley Taylor, Paul Howard, Richard Seifert, Anthony Rendina, John Ryan, Mike Little, Joe Hudson, Cpl. Oney, Tom Carroll, Betty Burris, Dep. Warden McGuigan, Major Cunningham, Captain Sagers, Captain Joseph Belanger, Staff Lt. Bernie Williams, Staff Lt. Burton, Lt. Larry Savage, Lise Merson, Sgt. Jack Evans, Sr., Sgt. Michael Moran, Delaware Center for Justice, Medical Director, QRT 1, and QRT 2, as well as for the Attorney General for the State of Delaware.

5. Pursuant to Fed. R. Civ. P. 4(c)(2) and (d)(2), Plaintiff shall complete and return to the Clerk of the Court an original "U.S. Marshal-285" form for the remaining defendants as follows: IBCC, Ms. Hard, Major Holman, R. Drake, B. Engram, T. Zanda, T. Kramer, Counselor Kromka, Lt. Porter, Rainey, Lt. Welcome, Lt. Secord, Lt. Harvey, J. Gardels, Lt. Stanton, Neal, Sgt. T. Tyson, F. Harris, S. Haikal, C. Pringle, L. Mitchell, and F. Scarpetti, and First Correctional Medical. Additionally, Plaintiff shall provide the Court with a copy of the amended complaint to be served upon each Defendant. Plaintiff is notified that the United States Marshal will not serve the amended complaint until all "U.S. Marshal 285" forms have been received by the Clerk of the Court. Failure to provide a copy of the amended complaint for each Defendant and the "U.S. Marshal 285" forms for each Defendant and the attorney general within 120 days from the date of this order may result in the complaint being dismissed or defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).

6. Upon receipt of the form(s) required by paragraph 5 above, the United States Marshal shall forthwith serve a copy of the amended complaint, this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the Defendants identified in the 285 forms.

7. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a Defendant, the United States Marshal shall personally serve said Defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said Defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

8. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a Defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

9. No communication, including pleadings, briefs, statement of position, etc., will be considered by the Court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

10. **NOTE: ***** When an amended complaint is filed prior to service, the Court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint

filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). ***

11. **NOTE:** *** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. ***


UNITED STATES DISTRICT JUDGE